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## State v. Burrell Respondent's Brief Dckt. 43570

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LAWRENCE G. WASDEN  
Attorney General  
State of Idaho  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534

PAUL R. PANTHER  
Deputy Attorney General  
Chief, Criminal Law Division

LORI A. FLEMING  
Deputy Attorney General

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 43570
Plaintiff-Respondent,	)	
	)	Bannock County Case No.
v.	)	CR-2013-1336
	)	
BRITTANY KAY BURRELL,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Burrell failed to establish that the district court abused its discretion by revoking her probation and ordering executed, without reduction, her underlying unified sentence of five years, with two years fixed, imposed following her guilty plea to possession of methamphetamine?

Burrell Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Burrell pled guilty to possession of methamphetamine and, in June 2013, the district court withheld judgment and placed Burrell on supervised probation for five years. (R., pp.84-91.) Less than three months later, Burrell violated her probation by

failing to attend her employment group, failing to pay her cost of supervision, failing to obtain employment, using methamphetamine and marijuana, failing to attend her intake appointment at Road to Recovery, failing to report for supervision, changing residence without permission, and absconding supervision. (R., pp.92-94, 103-110.) The district court revoked Burrell's probation and the withheld judgment, imposed a unified sentence of five years, with two years fixed, and retained jurisdiction. (R., pp.103-110.) Following the period of retained jurisdiction, the district court once again suspended Burrell's sentence and placed her on supervised probation for five years. (R., pp.116-19.)

Approximately six months later, in January 2015, Burrell's probation officer filed a second report of violation, alleging that Burrell had violated the conditions of her probation by being fired from her job for failing to report to work on multiple occasions, testing positive for methamphetamine, failing to report for UA testing on three separate occasions, and failing to report for supervision on three separate dates in January 2015. (R., pp.121-22.) Burrell admitted the allegations and the district court reinstated her on supervised probation for four years with the conditions that she submit to daily testing and check-ins with the Division of Community Corrections, reside at the Malad Assisted Living facility upon approval of funding, and wear an ankle monitor. (R., pp.133-36.)

Approximately four months later, in July 2015, Burrell's probation officer filed a third report of violation, alleging that Burrell had violated the conditions of her probation by associating with persons engaged in criminal activity, using methamphetamine intravenously on four dates, and violating the terms of her ankle monitor agreement "18 times in the past 30 days." (R., pp.139-40.) Burrell admitted the allegations. (R.,

p.146; Tr., p.4, L.19 – p.5, L.14.) At the disposition hearing for Burrell's third probation violation, her counsel made an oral Rule 35 request for a reduction of sentence. (Tr., p.6, Ls.10-13.) The district court denied the motion, revoked Burrell's probation, and ordered the underlying sentence executed without reduction. (R., pp.146-52; Tr., p.9, Ls.1-7.) Burrell filed a notice of appeal timely from the district court's order revoking probation and ordering her underlying sentence executed. (R., pp.155-58.)

Burrell asserts that the district court abused its discretion by revoking her probation and ordering her underlying sentence executed, without reduction, in light of her substance abuse and mental health issues. (Appellant's brief, pp.3-4.) Burrell has failed to establish an abuse of discretion.

"Probation is a matter left to the sound discretion of the court." I.C. § 19-2601(4). The decision to revoke probation lies within the sound discretion of the district court. State v. Roy, 113 Idaho 388, 392, 744 P.2d, 116, 120 (Ct. App. 1987); State v. Drennen, 122 Idaho 1019, 842 P.2d 698 (Ct. App. 1992). When deciding whether to revoke probation, the district court must consider "whether the probation [was] achieving the goal of rehabilitation and [was] consistent with the protection of society." Drennen, 122 Idaho at 1022, 842 P.2d at 701.

Upon revoking a defendant's probation, a court may order the original sentence executed or reduce the sentence as authorized by Idaho Criminal Rule 35. State v. Hanington, 148 Idaho 26, 28, 218 P.3d 5, 7 (Ct. App. 2009) (citing State v. Beckett, 122 Idaho 324, 326, 834 P.2d 326, 328 (Ct. App. 1992); State v. Marks, 116 Idaho 976, 977, 783 P.2d 315, 316 (Ct. App. 1989)). A court's decision not to reduce a sentence is reviewed for an abuse of discretion subject to the well-established standards governing

whether a sentence is excessive. Hanington, 148 Idaho at 28, 218 P.3d at 7. Those standards require an appellant to “establish that, under any reasonable view of the facts, the sentence was excessive considering the objectives of criminal punishment.” State v. Stover, 140 Idaho 927, 933, 104 P.3d 969, 975 (2005). Those objectives are: “(1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrong doing.” State v. Wolfe, 99 Idaho 382, 384, 582, P.2d 728, 730 (1978). The reviewing court “will examine the entire record encompassing events before and after the original judgment,” *i.e.*, “facts existing when the sentence was imposed as well as events occurring between the original sentencing and the revocation of probation.” Hanington, 148 Idaho at 29, 218 P.3d at 8.

In deciding whether to revoke Burrell’s probation, the district court had before it an abundance of information bearing on Burrell’s continued suitability for community supervision. In particular, the district court had before it information relating to Burrell’s ongoing substance abuse, unwillingness to abide by the law or the terms of community supervision, and failure to make any rehabilitative progress while on probation. Burrell has an extensive history of disregard for the law and the terms of community supervision. Between 2005 and 2013, Burrell incurred juvenile adjudications for petit theft, curfew violation, telephone harassment, minor in possession of tobacco, three adjudications for battery, and six adjudications for habitual truancy; adult criminal convictions for injury to child, unlawful entry, and the instant possession of

methamphetamine offense; and multiple probation violations. (PSI, pp.14-18.<sup>1</sup>) At the time of sentencing for the instant offense, Burrell scored in the “High Risk range of reoffending.” (PSI, p.23.) While on probation for the instant offense, Burrell continuously used illegal substances, failed to participate in rehabilitative programming, and failed to report for and/or actively avoided supervision. (R., pp.92-94, 121-22, 139-40.) Even with the requirement of daily check-ins and drug testing, “increased treatment,” and ankle monitoring during her third attempt at probation in this case, Burrell was unable or unwilling to comply with the terms of community supervision. (R., pp.134-35, 139-40.)

The district court considered all of the relevant information and reasonably concluded that Burrell was no longer an appropriate candidate for community supervision. Burrell has not shown that she was entitled to a reduction of her sentence, particularly in light of her abysmal performance on probation. Her ongoing substance abuse, refusal to abide by the terms of community supervision, and failure to participate in rehabilitative programming demonstrate Burrell’s failure to rehabilitate and her continued risk to society. Incarceration and treatment in a controlled environment is appropriate, due to the severity of Burrell’s substance abuse and her multiple failed attempts to rehabilitate in the community. Given any reasonable view of the facts, Burrell has failed to establish that the district court abused its discretion by revoking her probation and ordering the underlying sentence executed without reduction.

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<sup>1</sup> PSI page numbers correspond with the page numbers of the electronic file “CONFIDENTIAL CERTIFICATE OF EXHIBITS BURRELL 43570.pdf.”

Conclusion

The state respectfully requests this Court to affirm the district court's order revoking Burrell's probation and ordering her underlying sentence executed without reduction.

DATED this 9th day of February, 2016.

/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 9th day of February, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

ANDREA W. REYNOLDS  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General